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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,083	04/08/2004	Mathieu Lion	25402-005	2211

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1133 AVENUE OF THE AMERICAS
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EXAMINER

NGUYEN, TUAN N

ART UNIT	PAPER NUMBER
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3751

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12/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/822,083	Applicant(s) LION ET AL.	
	Examiner Tuan N. Nguyen	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 and 29-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 10/5/07 have been fully considered but they are not persuasive as indicated below

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 48 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation of the "material may be introduced into the reservoir from a surface communicable with the second portion" in lines 7-8 is not disclosed in the original specification; therefore, it is considered as new matter.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 45-49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with the language "such" that render the claims indefinite as to what exact structure is being referred to thereby. Some examples are "such surface" in line 9 of claim 45 and in line 4 of claim 48; "such

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coupling" in line 5 of claim 46; "such material to such surface" in line 6 of claim 47.

regarding claim 49, it is unclear as to what "each thereof" in line 5 is referring to and what surface is being referred to by the limitation "an intended surface" in line 6.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent . granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-4, 8-13, 15, 16, 19-21, 23, 25, 26, 30, 31 and 47-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Peilet as set forth in the previous office action.

The flexible reservoir (132) does comprises a cross-sectional area of increasing dimension therethroughout from the neck portion (about 144) to the end of the tapered portion of reservoir (132) above the neck portion (see Fig. 12). The handle is the first part and the nozzle is the second part as claimed

7. Claims 1-4, 8-17, 19-23, 25, 26 and 29-31, 38-43 and 47-49 are rejected under 35 U.S.C. 102(e) as being anticipated by Vayrette as set forth in the previous office action.

The handle (4) of Vayrette does comprise an increasing cross-sectional area therethroughout from the point where the force arrow to the top about (7) (see Fig. 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peilet.

Peilet discloses the handle and the reservoir as claimed except for their specific range size as claimed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to obtain a size in the specific range as claimed, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

9. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vayrette.

Vayrette discloses the handle and the reservoir as claimed except for their specific range size as claimed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to obtain a size in the specific range as claimed, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

10. Claims 14, 18 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vayrette in view of Landen et al. (hereinafter Landen).

The Vayrette reference teaches all of the limitations except for those in claims 14, 18 and 27; however, those limitations are disclosed by Landen as discussed in the previous office action. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Vayrette device to have the specific as set forth in claims 14, 18 and 27 as for example taught by Landen since known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces that are predictable to one of ordinary skill in the art.

11. Claims 24, 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vayrette in view of Niedo spial, Jr.

Although the of the Vayrette reference does not include a reservoir handle having an externally disposed rib with an orifice (the arcuate member of claim 45), attention is directed to the Niedo spial, Jr. reference which discloses a flexible reservoir handle (Figs. 22 and 23) having an externally disposed rib with an orifice (417) for suspending the reservoir. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ, on the Vayrette reservoir handle, an externally disposed rib with an orifice as, for example, taught by Niedo spial, Jr. in order to suspend the device for sale display or for storage.

12. Claims 24, 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vayrette in view of Chu et al. (hereinafter Chu).

Chu discloses a reservoir (22) having the shape with a cross-sectional area increasing in dimension from a point thereof most opposite coupling of the nozzle (24)

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and the reservoir (22), which is the only thing that lack in the Vayrette reference.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the reservoir of Vayrette to have a shape as for example taught by Chu since known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces that are predictable to one of ordinary skill in the art.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


TUAN NGUYEN
PRIMARY EXAMINER